

LAW OFFICES

SHOOK, HARDY & BACON

REPORT ON RECENT ETS
AND IAQ DEVELOPMENTS

January 7, 1994

SHB

2046362039

— IN THIS ISSUE —

IN THE UNITED STATES

REGULATORY AND LEGISLATIVE MATTERS

- Surgeon General Joslyn Elders announces campaign targeting children and ETS exposure, p. 1.
- HHS publishes notice of proposed smoking ban in Head Start programs, p. 1.
- Special Report: ETS/IAQ-related legislation currently pending in the 103d Congress, p. 2.

ETS LITIGATION AGAINST CIGARETTE MANUFACTURERS

- Parties submit joint proposed order to transfer venue in *Bluitt*, p. 5.
- No depositions in January in *Broin*; depositions scheduled in February, p. 6.

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

- Ruling in child custody case *Diddens* in favor of smoking parent, p. 7.
- Smokers' rights case *Doe* decided in New York, p. 7.

OTHER DEVELOPMENTS/MEDIA COVERAGE

- *Washingtonian* magazine calls Banzhaf "annoying," p. 10.
- "Tobacco Ban No Harm to Firms' Health," p. 10.
- "Anti-smoking Laws Enforced at Little Cost," p. 10.

SCIENTIFIC/TECHNICAL ITEMS

- "Dietary and Mental Health Differences Between Never-Smokers Living in Smoking and Non-Smoking Households," p. 11.
- "Environmental Tobacco Smoke and the Risk of Cancer in Adults," p. 11.
- "Smoke and Mirrors: The EPA's Flawed Study of Environmental Tobacco Smoke and Lung Cancer," p. 12.

IN EUROPE & AROUND THE WORLD

REGULATORY AND LEGISLATIVE MATTERS

- Lawmaker in Germany plans to introduce antismoking legislation in 1994, p. 13.
- Singapore will require ETS warning on cigarette packs, p. 13.
- New antismoking campaign is launched in the United Kingdom, p. 13.

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

- Update on *Cameron v. Qantas* case in Australia, p. 14.

LEGAL ISSUES AND DEVELOPMENTS

- Threatened legal actions in Australia involving a cruise line and a shopping mall, p. 14.

OTHER DEVELOPMENTS/MEDIA COVERAGE

- World airline news from Australia, Asia, China, Korea, Singapore, Thailand and the United Kingdom, p. 15.
- "Children Breathe Easier with Controls on Factory Fumes," p. 15.

2046362040

— TABLE OF CONTENTS —

Issue 63

January 7, 1994

IN THE UNITED STATES

REGULATORY AND LEGISLATIVE MATTERS

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS)

- [1] Surgeon General Launches National Antismoking Campaign 1
- [2] Notice to Ban Smoking in Head Start Programs Published 1

103D CONGRESS

- [3] Special Report: ETS/IAQ-Related Legislation Pending in 103d Congress; Congress to Reconvene on January 25, 1994 2
- [4] Joint Taxation Committee Assesses Cigarette Tax Increase Proposal 4

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

- [5] Waxman Seeks Cost Benefit Analysis of Legislation from EPA 4

U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

- [6] Hygiene Association Wants OSHA to Regulate IAQ 5

U.S. DEPARTMENT OF AGRICULTURE (USDA)

- [7] AHA Urges USDA to Reject Tobacco Proposal on Food Labeling 5

ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

- [8] *Bluitt*: Parties Submit Proposed Order Granting Defendants' Motion to Transfer Venue 5
- [9] *Broin*: R.J. Reynolds Tobacco Co. Added as a Defendant; Officers Noticed for Deposition ... 6
- [10] *Butler*: Plaintiffs Request Another Modification of the Discovery Schedule 6
- [11] *Dunn*: Defendants' Various Motions Denied 6

ETS/IAQ LITIGATION NOT INVOLVING CIGARETTE MANUFACTURERS

CHILD CUSTODY

- [12] *In re Marriage of Diddens*, 1993 Ill. App. LEXIS 1933 (Appellate Court of Illinois, Third District) (decided December 22, 1993) 7
- [13] *Harkness v. Henderson* (Family Court, Contra Costa County, California) (March hearing scheduled) 7

SMOKERS' RIGHTS: MENTAL HEALTH CARE FACILITY

- [14] *Doe v. Heath*, 1993 N.Y. App. Div. LEXIS 11432 (New York Supreme Court, Appellate Division, Fourth Department) (decided November 19, 1993) 7

CRIMINAL TRESPASS

- [15] Louisville Attorney Cited for Smoking in Hall of Justice 8

WORKPLACE: COLLECTIVE BARGAINING

- [16] *Department of Health and Human Services, SSA, Office of Hearings and Appeals, Syracuse, N.Y. and American Federation of Government Employees Local 1760*, No. 93 FSIP 164 (Federal Service Impasses Panel) (decided November 18, 1993) 8

PRISONER CASE

- [17] *LaFountain v. Johnson*, 1993 U.S. App. LEXIS 32213 (U.S. Court of Appeals, Sixth Circuit) (decided December 8, 1993) 8

LEGAL ISSUES AND DEVELOPMENTS

- [18] A Report on Day Two of The National Environmental Tobacco Smoke Conference 8
- [19] Police Union Files Grievance Over Smoking Ban 9
- [20] Smoking Ban Rescinded in Part in County Facilities 9

OTHER DEVELOPMENTS

- [21] Washington, D.C., Magazine Calls Banzhaf "Annoying" 10
- [22] High School Students Suspended After Protest 10

MEDIA COVERAGE

- [23] "Tobacco Ban No Harm to Firms' Health," R. Riggs, *San Diego Union-Tribune*, November 30, 1993 10
- [24] "Anti-smoking Laws Enforced at Little Cost," K. Boatman, *San Jose Mercury News*, November 29, 1993 10

2046362041

SCIENTIFIC/TECHNICAL ITEMS**UPCOMING SCIENTIFIC MEETINGS**

- [25] One-Day IAQ Course, Environmental Law and Policy Program, George Washington University, Washington, D.C., February 14 and September 7, 1994 10
- [26] Healthy Buildings '94, Budapest, Hungary, August 22-25, 1994 10

LUNG CANCER

- [27] "Dietary and Mental Health Differences Between Never-Smokers Living in Smoking and Non-Smoking Households," D.H. Thompson and D.M. Warburton, *Journal of Smoking-Related Disorders* 4(3): 203-211, 1993 [See Appendix A] 11

CARDIOVASCULAR ISSUES

- [28] "Indoor Passive Smoking and Cardiac Performance: Mechanisms Able to Cause Heart Failure," L. Mori, F. Bertanelli, P. Fabiano, A. Battaglia, and A. Leone, *Journal of Smoking-Related Disorders* 4(3): 213-217, 1993 [See Appendix A] 11

RESPIRATORY DISEASES AND CONDITIONS -- CHILDREN

- [29] "Effects of Passive Smoking on Respiratory Illness from Birth to Age Eighteen Months, in Shanghai, People's Republic of China," C. Jin and A.M. Rossignol, *Journal of Pediatrics* 123: 553-558, 1993 [See Appendix A] 11

OTHER CANCER

- [30] "Environmental Tobacco Smoke and the Risk of Cancer in Adults," J. Tredaniel, P. Boffetta, R. Saracci, and A. Hirsch, *European Journal of Cancer* 29A(14): 2058-2068, 1993 [See Appendix A] 11

OTHER HEALTH ISSUES

- [31] "Day Care Attendance and Other Risk Factors for Invasive Haemophilus influenzae Type b Disease," C. Arnold, S. Makintube, and G.R. Istre, *American Journal of Epidemiology* 138(5): 333-340, 1993 [See Appendix A] 11
- [32] "Bed Sharing, Smoking, and Alcohol in the Sudden Infant Death Syndrome," R. Scragg, E.A. Mitchell, B.J. Taylor, A.W. Stewart, R.P.K. Ford, J.M.D. Thompson, E.M. Allen, and D.M.O. Becroft, on behalf of the New Zealand Cot Death Study Group, *British Medical Journal* 307: 1312-1318, 1993 [See Appendix A] 12

INDOOR AIR QUALITY

- [33] "Asthma and the Home Environment," D. Norback, E. Bjornsson, J. Widstrom, G. Strom, C. Edling, U. Palmgren, C. Jansson, and G. Boman. In: *Building Design, Technology, and Occupant Well-Being in Temperate Climates*. E. Sterling, C. Bieva, and C. Collett (eds.). Atlanta, ASHRAE, 329-333, 1993 [See Appendix A] 12
- [34] "Experimental Exposures to (1-3)-Beta-D-Glucan," R. Rylander. In: *Building Design, Technology, and Occupant Well-Being in Temperate Climates*. E. Sterling, C. Bieva, and C. Collett (eds.). Atlanta, ASHRAE, 338-340, 1993 [See Appendix A] 12
- [35] "Transformations, Lifetimes, and Sources of NO₂, HONO, and HNO₃ in Indoor Environments," C.W. Spicer, D.V. Kenny, G.F. Ward, and I.H. Billick, *Journal of the Air and Waste Management Association* 43: 1479-1485, 1993 [See Appendix A] 12

STATISTICS AND RISK ASSESSMENT

- [36] "Smoke and Mirrors: The EPA's Flawed Study of Environmental Tobacco Smoke and Lung Cancer," G.L. Huber, R.E. Brockie, and V.K. Mahajan, *Cato Review of Business and Government: Regulation* 1993(3): 44-54, 1993 [See Appendix A] 12

2046362042

IN EUROPE & AROUND THE WORLD

REGULATORY AND LEGISLATIVE MATTERS

AUSTRALIA

- [37] Canberra Government Adjourns Before Considering Antismoking Legislation 12
- [38] Ministerial Council Adopts ETS Labeling Recommendations 13

GERMANY

- [39] Lawmaker May Introduce Public Smoking Legislation 13

SINGAPORE

- [40] Singapore Steps Up Campaign to Become the World's First Smoke Free Country 13

UNITED KINGDOM

- [41] U.K. Launches Antismoking Campaign 13

ETS LITIGATION NOT INVOLVING THE TOBACCO INDUSTRY

AUSTRALIA

- [42] *Cameron v. Qantas Airways Limited* (Federal Court, New South Wales) (filed April 7, 1993) 14

LEGAL ISSUES AND DEVELOPMENTS

AUSTRALIA

- [43] Shopper Claims ETS Caused Asthma Attack, Threatens Suit 14

OTHER DEVELOPMENTS

AUSTRALIA

- [44] Drivers Told to Throw Away Car Cigarette Lighters 15

AIRLINES

- [45] World Airline News 15

MEDIA COVERAGE

- [46] "Children Breathe Easier with Controls on Factory Fumes," *South China Morning Post*, December 17, 1993 15

APPENDIX A Article Summaries

APPENDIX B Upcoming Scientific Meetings

APPENDIX C Press Conference Materials

2046362043

REPORT ON RECENT ETS AND IAQ DEVELOPMENTS

IN THE UNITED STATES

REGULATORY AND LEGISLATIVE MATTERS

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS)

[1] **Surgeon General Launches National Antismoking Campaign**

On January 6, 1994, Surgeon General Joycelyn Elders announced a public information campaign on ETS sponsored by the American Academy of Otolaryngology-Head and Neck Surgery. The campaign is designed to warn the public about the purported health effects of ETS on children. At a press conference held in a Washington, D.C. elementary school, Elders cited the EPA Risk Assessment on ETS and repeated some of its claims about the effects of ETS exposure on children's health. Copies of Elders' prepared remarks and of press releases concerning the academy's public information campaign are attached as Appendix C.

"With the EPA report," she stated, "we now have all the ammunition we need to work aggressively to protect our children from secondhand smoke." Elders applauded the academy's campaign while outlining some of the projects being undertaken by federal agencies to increase public awareness about the issue. She reported that some nine million children under the age of five in the United States live in homes with at least one smoker.

Appearing at the press conference with the Surgeon General were Joan Lunden, co-host of ABC's "Good Morning America" network television program, Dr. Nancy Snyderman, medical correspondent on the same program, Dr. Jerome Goldstein, the executive vice president of the Academy, and Dr. David Nielsen, campaign chair. Lunden is the campaign spokesperson and appears in a videotape produced by the Academy entitled "Poisoning Our Children: The Perils of Secondhand Smoke."

During the press conference the results of a national awareness survey on ETS and children's health were released. Eighty-two percent of the 1,000 adults responding to the survey reportedly said they had heard or seen information about the purported effects of ETS on children within the last year. Three-fourths reported that they had seen the information on television. Most respondents associated ETS exposure with upper respiratory infections, but less than one-third associated ETS with children's ear infections.

Two-fifths of the respondents agreed with the statement, "Surgery and hospitalization are frequently required when a child is continuously exposed to secondhand smoke," while 95 percent of the respondents either strongly agreed or somewhat agreed with the statement, "Smoking should be eliminated from day care centers and elementary schools." The survey findings were presented by a number of children between the ages of five and 10 who allegedly suffer health effects from exposure to ETS.

[2] **Notice to Ban Smoking in Head Start Programs Published**

Citing the EPA Risk Assessment on ETS, HHS has published a Notice of Proposed Program Instruction, seeking public comments on a plan to require all Head Start programs to provide a smoke-free environment for staff and participating children and adults. The plan would require all Head Start grantees to establish and enforce written policies that will ensure their sites will be smoke free. Comments on the proposal can be submitted to the Administration on Children, Youth and Families until February 28, 1994.

Head Start is a federal program that provides low income, preschool-aged children and their families with health, nutritional, educational, social and other services. In fiscal year 1992, Head Start served 621,078 children between the age of three and the age of compulsory school attendance through a nationwide network of 1,370 grantees and 575 delegate agencies.

2046362044

The smoke-free policies to be adopted by grantees (i) must "prohibit smoking at all times in all space utilized by the program," including outdoor play areas and vehicles used for transporting children; (ii) should "address home visits and group socialization activities (which include field trips, neighborhood walks or other outdoor group activities) so that parents and staff refrain from smoking when Head Start activities are taking place"; and (iii) "[f]or Head Start programs that share a building with other occupants, grantees should take steps to reduce children's exposure to smoke from other sources in the building, for example, by modifying ventilation, altering traffic patterns, and/or establishing a 'smoke-free zone' around the Head Start site."

The plan would be effective 60 days from the date of its issuance in final form, and compliance would be monitored during on-site program reviews. Compliance would be demonstrated by (i) posting of approved written policies; (ii) evidence that all staff have been informed of the policy; (iii) correspondence and meeting notices advising parents and staff of the policy; (iv) evidence of compliance through a physical inspection of the facility; and (v) evidence of efforts to limit the introduction of ETS from outside sources. See *Federal Register*, December 29, 1993.

The PRO-KIDS legislation currently being considered in Congress (H.R. 710, S. 261) would restrict smoking to separately ventilated areas of any indoor facility providing federally-funded health, social and educational programs for children under the age of 18. This legislation, if enacted, would cover Head Start programs.

Another federally-funded program affecting children already is subject to a federal law providing that "none of the funds in this Act shall be available to pay administrative expenses of WIC [Women, Infants, and Children] clinics except those that have an announced policy of prohibiting smoking within the space used to carry out that program" (P.L. 103-111, H.R. 2493). WIC is a federally funded special supplemental food program authorized under the Child Nutrition Act of 1966. The program assists pregnant and nursing women, as well as their infants and children up to the age of five, with nutrition and immunizations. WIC clinics, because they are federally-funded and serve children under the age of five, would be also covered by the PRO-KIDS legislation if it is enacted.

103D CONGRESS

[3] Special Report: ETS/IAQ-Related Legislation Pending in 103d Congress; Congress to Reconvene on January 25, 1994

In 1993, U.S. senators and representatives introduced a number of measures with a bearing on ETS and IAQ issues. These measures are still viable and are subject to hearing and consideration when Congress reconvenes on January 25, 1994. The following is a summary of the legislation discussed in previous issues of this Report.

Ban on Smoking in Federal Buildings Act

- H.R. 881 -- Introduced by Representative Jim Traficant (D-Ohio) on February 16, 1993, this measure would restrict smoking to separately ventilated areas in any indoor portion of a Federal building and in any other space owned or leased for use by a federal agency. The bill was approved by the House and, after being read twice in the Senate, was placed on the Senate Legislative Calendar.

Comprehensive Occupational Safety and Health Reform Act

- H.R. 1280, S. 575 -- Introduced in the House by Representative William Ford (D-Mich.) on March 10, 1993, and in the Senate by Senator Edward Kennedy (D-Mass.) on March 11, 1993, this legislation requires that occupational safety and health standards address "a significant risk" of material impairment to an employee's health or functional capacity. The House measure lowers the threshold for a finding of significant risk for suspected carcinogens to one in a million. A number of committee hearings were held on the measures, and the Clinton administration is apparently poised to support the reform legislation. A Republican version of OSHA reform legislation (H.R. 2937) was introduced in the House on August 6, 1993, by Representatives William Goodling (R-Pa.) and Harris Fawell (R-Ill.). No separate hearings have been scheduled on this measure.

Department of Environmental Protection Act

- H.R. 3425 -- Introduced by Representative John Conyers on November 3, 1993, this bill would redesignate the EPA as a cabinet-level department. The bill addresses contract management problems at the agency, but does not otherwise make any

2046362045

change in existing environmental law or alter any existing environmental policy. The measure was cleared for limited debate on the House floor, but was not considered further before the House recessed on November 22, 1993. The Senate version of the legislation (S. 171) was approved by that body on May 4, 1993, with a controversial amendment that would require the EPA to conduct risk assessments and cost-benefit analyses with regard to environmental regulations. A number of congressmen support the addition of risk analysis language to the House measure. Representative "Billy" Tauzin (D-La.) introduced a separate measure (H.R. 3395) on October 27, 1993, that would require the preparation of risk assessments in connection with any federal health and safety or environmental regulation.

Environmental Risk Reduction Act of 1993

- S. 110, H.R. 3111 -- Introduced in the Senate in January 1993 by Senator Patrick Moynihan (D-N.Y.) and in the House in September by Representative Dick Zimmer (R-N.J.), this bill would establish guidelines to ensure consistency and technical quality in risk assessments and would create Committees on Relative Risks and Environmental Benefits that would be independent of EPA's Science Advisory Board. The measure was referred to a number of committees where it remains.

Fairness in Tobacco and Nicotine Regulation Act of 1993

- H.R. 2147 -- Introduced by Representatives Mike Synar (D-Okla.) and Richard Durbin (D-Ill.) on May 18, 1993, this bill would require cigarette-package warnings about the purported dangers associated with ETS, as well as a list of chemical additives and constituents found in tobacco smoke.

Indoor Air Quality Act of 1993

- S. 656 -- Introduced by Maine Senator George Mitchell (D) on March 25, 1993, this bill would give EPA regulatory authority over indoor air. It would require EPA to publish a list designating "the contaminants that may occur or are known to occur in indoor air at levels which may reasonably be expected to have an adverse impact on human health." The measure has been approved by the Senate. The companion bill in the House (H.R. 1930) was introduced on April 29, 1993, by

Representative Joseph Kennedy II (D-Mass.) and referred to three committees. Because Kennedy subsequently introduced another IAQ bill (H.R. 2919, discussed below) that required only one committee referral, H.R. 1930 has been superseded.

Indoor Air Act of 1993

- H.R. 2919 -- Introduced by Representative Kennedy on August 6, 1993, this measure gives EPA regulatory authority over indoor air and would require EPA to disseminate public health advisories about "indoor air pollutants." EPA would also be required to promulgate guidelines for identifying and eliminating constituents of indoor air that are hazardous. The bill was referred to the House Energy and Commerce Committee, where a hearing was held to consider the measure on November 1, 1993.

Preventing Our Federal Building Workers and Visitors From Exposure to Deadly Smoke (PRO-FEDS) Act of 1993

- S. 262, H.R. 710 -- Introduced in the Senate by Senator Frank Lautenberg (D-N.J.) on January 28, 1993, and in the House by Representative Richard Durbin (D-Ill.) on February 2, 1993, the PRO-FEDS bill would restrict smoking to separately ventilated areas of every building owned or leased for use by any agency of the Federal government. EPA would be given regulatory authority under both measures. No hearings were held on either bill, but Lautenberg did get Senate approval to attach his bill to a House appropriations measure (H.R. 2403). The PRO-FEDS language was removed in conference before the appropriations bill received final approval.

Preventing Our Kids From Inhaling Deadly Smoke (PRO-KIDS) Act of 1993

- S. 261, H.R. 710 -- Introduced in the Senate by Senator Frank Lautenberg (D-N.J.) on January 28, 1993, and in the House by Representative Richard Durbin (D-Ill.) on February 2, 1993, the PRO-KIDS legislation would restrict smoking to separately ventilated areas of buildings where federally-funded services are provided to children under the age of 18. EPA would be given regulatory authority under this bill. No hearings were held on either bill, but Lautenberg did get Senate approval to attach his bill to a House appropriations measure (H.R. 2518). The PRO-KIDS language was

2046362046

removed in conference before the appropriations bill received final approval.

Promotion of Tobacco Products, Restriction

- H.R. 3614 -- Introduced by Representative Henry Waxman (D-Cal.) on November 22, 1993, this bill would, among other matters, require larger warning labels on cigarette packages that would include the warning, "Smoke From These Cigarettes Can Cause Cancer in Non-Smokers." The measure, which has four cosponsors, was referred to the House Committee on Energy and Commerce.

Risk Communication Act of 1993

- H.R. 2910 -- Introduced by Representative Carlos Moorhead (R-Cal.) on August 6, 1993, this bill would require EPA Administrator to apply a series of principles designed to assure that risk assessments are "scientifically objective and inclusive of all relevant data." The bill was referred to two House committees.

Safe Cabin Air Quality Act of 1993

- H.R. 2985 -- Introduced by Representative Jerrold Nadler (D-N.Y.) on August 6, 1993, this bill would require the Federal Aviation Administration to issue regulations mandating ventilation, filtration and humidity standards for commercial airline cabins. The bill would also require the monitoring of ozone levels on aircraft. A House subcommittee held a hearing on airline IAQ a week before the bill was introduced.

Smoke-Free Environment Act of 1993

- H.R. 3434, S. 1680 -- Introduced in the House by Representative Henry Waxman (D-Cal.) on November 3, 1993, and in the Senate by Senator Frank Lautenberg (D-N.J.) on November 18, 1993, this legislation would restrict smoking to separately ventilated areas of nearly every building in the United States. Where separately ventilated areas do not exist, smoking would be prohibited indoors and within the immediate vicinity of the entrance to the facility. The Waxman bill would amend the Public Health Service Act; the Lautenberg bill would amend the Toxic Substances Control Act.

[4] Joint Taxation Committee Assesses Cigarette Tax Increase Proposal

The staff of the Joint Committee on Taxation has issued a description and analysis of Title VII of the

"Health Security Act" (H.R. 3600, S. 1757, S. 1775) that includes an analysis of the impact of President Clinton's proposal to fund health care reform by raising the tax on tobacco products. Part of that analysis includes a discussion of ETS and what the tax hike could mean with respect to the purported costs of smoking to nonsmokers.

Notably absent from the discussion is a reference to the EPA Risk Assessment on ETS. Citing a Health and Human Services report and a report of the Surgeon General, the authors state, "[r]ecent medical research has suggested that 'second-hand smoke,' that is, the smoke from smokers inhaled by nonsmokers, creates health risks and costs for non-smokers." The level of a tax hike is critical to the goal of economic efficiency, say the report's authors. "Too great a tax could reduce economic efficiency by discouraging more tobacco use than the harm caused by second-hand smoke might justify." See *BNA Daily Report for Executives*, December 22, 1993.

U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

[5] Waxman Seeks Cost Benefit Analysis of Legislation from EPA

According to a press report, Representative Henry Waxman (D-Cal.) followed the introduction of his Smoke-Free Environment Act of 1993 (H.R. 3434) with a letter to EPA Administrator Carol Browner requesting that EPA review potential compliance costs and health and economic benefits that could result from the legislation. Waxman apparently placed a January 31, 1994, deadline on the information request, stating that "the subcommittee will give high priority to consideration of HR 3434 early in the second session of the Congress."

Waxman's bill would restrict smoking to separately ventilated areas in virtually every building in the United States. The legislation would act as a smoking ban in buildings not equipped with separately ventilated areas. With regard to his request to EPA, Waxman is seeking a report on eight issues related to the bill, including possible savings associated with fewer cases of lung cancer, heart disease, asthma and other health concerns purportedly linked to ETS exposure. The agency is also reportedly being asked

2046362047

to address (i) potential medical savings for smokers who may quit or reduce their consumption of cigarettes as a result of the bill; (ii) the number of lives that could be saved among smokers and nonsmokers; and (iii) potential increases in productivity, decreases in absenteeism, reductions in building operation and maintenance costs, and restrictions in fire-related expenses.

According to EPA officials, Browner has agreed to respond to the request, but some of the issues have not been the subject of extensive study in currently available research materials. *See BNA Occupational Safety & Health Reporter*, December 22, 1993.

U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

[6] Hygiene Association Wants OSHA to Regulate IAQ

According to the director of government affairs for the American Industrial Hygiene Association (AIHA), the indoor air quality legislation introduced by Representative Joseph Kennedy II (D-Mass.) does not have his group's support. The bill (H.R. 2919), which would establish federal training and certification for IAQ consultants and would direct the EPA to promulgate guidelines for eliminating indoor air contaminants, is unacceptable to AIHA primarily because it does not give regulatory responsibilities to OSHA.

AIHA does support the IAQ bill introduced by Maine Senator George Mitchell (D) and passed by the Senate on October 29, 1993 (S. 656), even though it does not give primary responsibility on indoor air to OSHA. Mitchell's bill lacks the contractor certification and training requirement. According to a press report, AIHA hopes that Kennedy will rethink his proposal and will ensure that OSHA becomes the lead agency on indoor air. *See BNA Occupational Safety & Health Daily*, December 16, 1993.

AIHA is a member of the newly-formed Coalition on Regulation of Workplace ETS, which wrote a letter to Labor Secretary Robert Reich on December 1, 1993, urging him to initiate rulemaking that would require all workplaces to be smoke free. *See* issue 62 of this Report, December 17, 1993.

U.S. DEPARTMENT OF AGRICULTURE (USDA)

[7] AHA Urges USDA to Reject Tobacco Proposal on Food Labeling

Alleging that the tobacco industry has refused to label products with warnings about the purported health effects of ETS exposure, the American Heart Association (AHA) has reportedly urged Agriculture Secretary Mike Espy to reject a proposal that food labels with the AHA logo contain a statement that tobacco companies and their subsidiaries are not allowed to participate in the AHA labeling program. The AHA logo and name will apparently be affixed, by cooperative agreement with the non-tobacco-related producers of food products, to products meeting certain USDA and FDA endorsement regulations.

When the AHA learned that the USDA was considering the statement about tobacco companies, it reportedly sent the letter to Espy complaining, "Such policy is designed only to serve the interests of the makers of a product that accounts for one out of every seven deaths in this country. We find it somewhat ironic that the tobacco industry would make such arguments on the basis of the need for disclosure of material facts when they continue to withhold important health information from the public about the dangers of addiction, stroke, environmental tobacco smoke, etc." *See Food Labeling News*, October 28, 1993.

ETS-RELATED LITIGATION AGAINST CIGARETTE MANUFACTURERS

[8] *Bluitt*: Parties Submit Proposed Order Granting Defendants' Motion to Transfer Venue

On January 3, 1994, the parties submitted an agreed order to the court that would grant defendants' motion to transfer venue. The order has not yet been entered. The parties have not submitted an agreed order that would grant plaintiffs' motion to amend their complaint, although the parties do have an agreement in principle.

In the motion to transfer venue, the defendants seek transfer of the case to the U.S. District Court for the

2046362048

Northern District of Texas from the Eastern District. Plaintiffs' motion to amend their complaint was filed in response to a defense motion to dismiss their fraud claims for lack of particularity and in response to defendants' motion for a more definite statement.

Plaintiffs in this action allege Willie Ruth Bluit was a nonsmoker who died of lung cancer as a result of her workplace exposure to environmental tobacco smoke. Defendants in the action are the six major U.S. cigarette manufacturers. *Bluit v. R.J. Reynolds Tobacco Co., et al.* (U.S. District Court, Eastern District, Texas) (filed August 30, 1993).

[9] *Broin*: R.J. Reynolds Tobacco Co. Added as a Defendant; Officers Noticed for Deposition

The Reynolds defendants reached an agreement with plaintiffs whereby R.J. Reynolds Tobacco Co. (RJRT) would be added as a defendant in return for the dismissal of the other Reynolds entities. Accordingly, the December 17, 1993, hearing on plaintiffs' motion to add RJRT and R.J. Reynolds Tobacco International as defendants, and on Reynolds' motion to dismiss, was not held. Plaintiffs served RJRT on December 21.

Plaintiffs noticed depositions of three RJRT officers for early February. No depositions of present or former executives or employees of any of the defendants are presently scheduled to be taken during January.

At issue in this case are the claims of 28 flight attendants allegedly injured by occupational exposure to ETS. In addition, the husband of one of the flight attendants claims loss of consortium. The 28 attendants purport to represent a class of approximately 60,000 other attendants. Plaintiffs' class action allegations have been dismissed by the trial court; plaintiffs' appeal of that dismissal is pending in the Florida Court of Appeal.

Injuries alleged by the putative class representatives include lung cancer, breast cancer and unspecified respiratory ailments. Plaintiffs further allege that occupational exposure to ETS on board aircraft causes at least 22 diseases and a reasonable fear of contracting such diseases. The defendants include the six major U.S. cigarette manufacturers (plus related entities), UST, Inc., United States Tobacco Company, Dosal Tobacco Corp., the Council for Tobacco Research, The Tobacco Institute, and three trade associations. *Broin, et al., v. Philip Morris, et al.* (Circuit Court, Dade County, Florida) (filed October 31, 1991).

[10] *Butler*: Plaintiffs Request Another Modification of the Discovery Schedule

Plaintiffs did not designate their expert witnesses as scheduled on December 23, 1993. Instead, on December 28, plaintiffs submitted a proposed agreed order to defendants that would, if granted, extend plaintiffs' expert witness designation date to January 22, 1994, and defendants' designation date from March 8 to April 7.

Plaintiffs contend that Burl Butler, a barber from Laurel, Mississippi, developed lung cancer as a result of his occupational exposure to environmental tobacco smoke. The defendants consist of the six major U.S. cigarette manufacturers and several local retailers. *Butler v. R.J. Reynolds Tobacco Company, et al.* (Circuit Court, Hinds County, Mississippi) (filed October 21, 1992).

[11] *Dunn*: Defendants' Various Motions Denied

On December 29, 1993, the court issued an order denying defendants' various motions. The motions included a motion to transfer venue from the Circuit Court of Delaware County, Indiana, to the Circuit Court of Grant County, Indiana, and separate motions to dismiss for lack of personal jurisdiction that were filed by the holding company defendants, American Brands, Liggett & Myers, Loews Corp. and RJR Nabisco Holdings Corp.

Plaintiffs in this case contend that Mildred Wiley was a nonsmoker who died of lung cancer as a result of workplace exposure to environmental tobacco smoke. Her husband, Philip Wiley, is also asserting a loss of consortium claim. Defendants in the case are the six major U.S. cigarette manufacturers, parent companies of some of the manufacturers, The Tobacco Institute, and the Council for Tobacco Research. *Dunn v. RJR Nabisco Holdings Corporation, et al.* (Superior Court, Delaware County, Indiana) (filed May 28, 1993).

2046362049

ETS/LAQ LITIGATION NOT INVOLVING
CIGARETTE MANUFACTURERS

CHILD CUSTODY

- [12] *In re Marriage of Diddens*, 1993 Ill. App. LEXIS 1933 (Appellate Court of Illinois, Third District) (decided December 22, 1993)

In an action to modify custody filed by the father of two boys, an Illinois appellate court has determined not to remove physical custody of the boys from their smoking mother. The parties in this case, Brian and Debra Diddens, were divorced in 1990 when their sons were aged three and one. The boys remained in the custody of Debra, who subsequently moved into her parents' home. In April 1992, Brian petitioned the court for modification of custody on the ground that there had been a material change in the circumstances of the parties since the divorce decree was entered. Among the allegations of change was that the health of the boys, who are both allegedly asthmatic, had deteriorated due to ETS exposure in the mother's home.

In rejecting the allegation of changed circumstances, the court specifically found, "it was not established that the environment in the [mother's] home caused the health problems. Nicholas was asthmatic prior to the divorce, and Andrew appeared to be developing some of the same physical symptoms that Nicholas suffered from as he, Andrew, grew older. Moreover, the evidence demonstrated that the adult smokers in the [mother's] home had voluntarily eliminated cigaret [sic] smoke in the house for the benefit of the children. Although the testimony established that the children required frequent medications, it did not demonstrate that they were being deprived of medical attention for their needs in their current custodial situation."

- [13] *Harkness v. Henderson* (Family Court, Contra Costa County, California) (March hearing scheduled)

A California woman's request that her ex-husband not be permitted to smoke in the presence of their two minor daughters will reportedly be heard by the court in March 1994. Although the children in this case, aged seven and ten, evidently do not suffer from any chronic respiratory disease, a services evaluator has recommended that the father be prohibited from

smoking in the children's presence and that he be ordered to participate in treatment for "tobacco addiction." The children's father, an attorney, is reportedly defending the case as a matter of privacy. See *Philadelphia Inquirer*, December 29, 1993. Further details about the case appear in issue 57 of this Report, October 8, 1993.

SMOKERS' RIGHTS: MENTAL
HEALTH CARE FACILITY

- [14] *Doe v. Heath*, 1993 N.Y. App. Div. LEXIS 11432 (New York Supreme Court, Appellate Division, Fourth Department) (decided November 19, 1993)

A New York appellate court has reinstated several claims made by an involuntary patient at a psychiatric center who alleged that her rights were being violated by a smoking ban imposed at the center in January 1992. According to the opinion of the trial court, the policy had been implemented gradually following input from staff and patients and was required for the facility to maintain its accreditation and funding. The stated justification for the ban was to protect the health of patients, to reduce staff and patient exposure to ETS, and to reduce the risk of fire.

The smoking policy at the facility requires a complete ban on smoking indoors by patients and staff. The policy regarding smoking opportunities out of doors and access to cigarettes is established individually by each in-patient unit at the facility. Infractions of the policy are also handled on a unit-by-unit basis.

The strict limitations on the number of cigarettes that could be smoked out of doors by patients in the petitioner's unit was modified somewhat after oral argument in the case. Patients are now apparently permitted an unlimited supply of their own cigarettes, which may be smoked in a designated outdoor area unless there is a medical condition to limit their use.

Although it is not entirely clear from the trial court and appellate court opinions which claims were reinstated, the petitioner had alleged that the full ban on smoking (i) is arbitrary and capricious; (ii) violates her right to an individualized treatment plan; (iii) unfairly withdraws privileges without clinical justification; (iv) violates Equal Protection by irrationally

2046362050

discriminating between patients in different units, as well as between facility patients and individuals in State correctional facilities; (v) is not a uniform policy among State facilities; (vi) violates her constitutional and civil rights solely because of mental disability; and (vii) violates her constitutional and due process right to privacy.

CRIMINAL TRESPASS

[15] Louisville Attorney Cited for Smoking in Hall of Justice

According to a press report, Louisville, Kentucky, attorney Thomas McAdam was cited by sheriff's deputies for refusing to extinguish his pipe in the Hall of Justice and for refusing to leave the building as requested. McAdam was reportedly scheduled to appear in court on a charge of third-degree criminal trespass on December 28, 1993. According to McAdam, there is no law banning smoking in the building, and he cannot be prosecuted for violating a nonsmoking policy. The policy was apparently adopted on November 8, 1993, and several judges have reportedly been observed violating the policy since then. See *The Courier-Journal*, December 11, 1993.

WORKPLACE: COLLECTIVE BARGAINING

[16] *Department of Health and Human Services, SSA, Office of Hearings and Appeals, Syracuse, N.Y. and American Federation of Government Employees Local 1760*, No. 93 FSIP 164 (Federal Service Impasses Panel) (decided November 18, 1993)

According to a press report, a Federal Service Impasses Panel has ordered the adoption of a management proposal to restrict smoking to outdoor areas and to lunch and scheduled break time only. The union, representing some 19 employees, had sought additional smoking breaks, but the panel rejected the proposal, saying management's plan "provides sufficient accommodation for smokers now required to go outside to smoke to foster a healthy workplace while minimizing disruptions of service to the public." See *Government Employee Relations Report*, December 27, 1993.

PRISONER CASE

[17] *LaFountain v. Johnson*, 1993 U.S. App. LEXIS 32213 (U.S. Court of Appeals, Sixth Circuit) (decided December 8, 1993)

In this unpublished opinion, the Sixth Circuit Court of Appeals has determined that a Michigan prison inmate may proceed to litigate a claim that his Eighth and Fourteenth Amendment rights were violated by his exposure to ETS. The inmate, Wayne LaFountain, had alleged that exposure to ETS caused him to suffer sinus-related headaches, watering eyes and troubled breathing. He also alleged that ETS exposure could result in lung disease, heart disease and death. The trial court had dismissed the claim prior to the U.S. Supreme Court's decision in *Helling v. McKinney*, 113 S. Ct. 2475 (1993).

The court of appeals found it questionable that the "present medical needs of the plaintiff are serious enough to state a cause of action." Yet, the court found that LaFountain had "clearly pleaded that his future health was being unreasonably endangered by his forced exposure to ETS and that this exposure was the result of the defendant's deliberate indifference." On this basis, and relying upon the *McKinney* decision, the court determined that LaFountain had stated a cause of action. Although LaFountain had since been transferred to another facility and could no longer pursue his claim for injunctive relief, the court did remand the case to the trial court for a decision on his request for monetary damages.

LEGAL ISSUES AND DEVELOPMENTS

[18] *A Report on Day Two of The National Environmental Tobacco Smoke Conference*

The second day of The National Environmental Tobacco Smoke Conference featured presentations in three areas: ETS exposure in the workplace; ETS legislation in the U.S. Senate; and ETS litigation [not involving the industry]. As the day proceeded, attendance dwindled from 50 persons to approximately 20. In contrast to the first day of the conference, which was covered by C-SPAN and various print journalists, the second day was not attended by any national news media.

The two-day conference was held on December 16-17, 1993, in Washington, D.C. It was sponsored by IAQ Publications, Inc., which publishes a monthly newspaper called *Indoor Air Review*. A summary of the first day's presentations, along with the conference agenda, appeared in issue 62 of this Report, December 17, 1993. Because the second day of the conference coincided with the scheduled distribution of issue 62, a summary of the proceedings on December 17 had to be carried over to this Report.

The morning sessions on December 17 were devoted to ETS exposure in the workplace. Among the speakers on this topic was John Tiffany of the newly formed Coalition on Regulation of Workplace ETS. He discussed the coalition's support of an OSHA standard that would provide all employees with a smoke-free environment. Approximately two weeks before the conference, the coalition sent a letter to Labor Secretary Robert Reich urging him to commence rulemaking to prohibit smoking in the workplace.

Also speaking about ETS in the workplace was Bob Harrington, a director of the National Restaurant Association. According to Harrington, the association opposes any new governmental regulations that would apply to restaurants, disagrees with on-premise signage and believes that behavioral legislation is unenforceable. Customer preference, not the government, should drive the accommodations available in restaurants, Harrington said.

With respect to ETS legislation in the U.S. Senate, the speaker was Sander Lurie, legislative assistant to New Jersey Senator Frank Lautenberg (D). During the first session of the 103d Congress, Lautenberg introduced and actively promoted a pair of antismoking bills that he calls PRO-KIDS (S. 261) and PRO-FEDS (S. 262). Lurie, during his presentation, briefly discussed the ETS risk assessment litigation, claiming that it is "irrelevant" on Capitol Hill. Said Lurie: "The issue has been decided in the minds of the members. Scientific debate is behind us." Lurie also said it is unlikely that there will be any action on ETS legislation until after the issue of health care reform (and the proposed 75-cent cigarette sales tax increase) has been resolved.

The speakers on ETS litigation included John Fox, a San Francisco-area labor and employment lawyer who has done work for The Tobacco Institute. Fox told

the audience that, historically, courts have been hostile to claims of nonsmokers seeking smoke-free workplaces. He predicted that this hostility will continue because courts will prefer a resolution of the issue outside the courtroom.

[19] Police Union Files Grievance Over Smoking Ban

According to a press report, a Tulsa police union has filed a grievance with the city's personnel director challenging the validity of a new ban on smoking in patrol cars. The union reportedly alleges that the issue is a matter for collective bargaining and that the city unilaterally imposed the ban without giving the union any prior notice that it intended to do so.

The new policy also apparently includes a ban on smoking in private government offices. The city's attorney says he believes that the city may regulate smoking in private offices because the state's regulation of smoking in public places specifically excludes private offices from the definition of "public place." Thus, he concludes, private offices are not covered by state law on smoking and can be regulated by the city. See *Associated Press*, December 2, 1993.

[20] Smoking Ban Rescinded in Part in County Facilities

Administrators in Bucks County, Pennsylvania, have reportedly rescinded part of a nine-month-old ban on smoking in county facilities. Smoking will now apparently be permitted in one building with office windows that open, and smokers in those offices must keep their windows open. A smokers' hut will be constructed adjacent to the courthouse/administration building, which has windows that do not open.

The change in policy came during negotiations with two of the 11 unions representing county workers. Evidently, the unions had filed an unfair labor practices complaint with the state Labor Relations Board after unilateral imposition of the smoking ban. Hearings on the matter were reportedly delayed to permit the parties to work out a compromise. The new policy emerging from the latest negotiations reportedly includes a provision that violators will not be punished unless they are repeat offenders. See *Philadelphia Inquirer*, December 23, 1993.

OTHER DEVELOPMENTS

[21] Washington, D.C., Magazine Calls Banzhaf "Annoying"

The December 1993 issue of *Washingtonian* magazine announced its choices for the 25 "Most Annoying People" of the year. Among them was John Banzhaf, executive director of Action on Smoking and Health (ASH). According to the magazine, "This George Washington University law professor was going to be the next Ralph Nader, as if one weren't enough. Instead he turned into Nader-Lite."

[22] High School Students Suspended After Protest

More than 100 Grayson County High School students reportedly launched a protest over, among other things, a ban on student smoking on school property. After a school assembly was held to air the students' grievances, approximately 30 of the students, most of whom were reportedly angry about the smoking policy, refused to return to their classrooms and were suspended for three days. See *The Courier-Journal*, December 21, 1993.

MEDIA COVERAGE

[23] "Tobacco Ban No Harm to Firms' Health," R. Riggs, *San Diego Union-Tribune*, November 30, 1993

According to a survey sponsored by the Southern Coast Regional Board in California, three businesses that cater to or employ young people reported that they have lost business as a result of restrictions on smoking. Eleven of the businesses surveyed reported an increase in income. Nearly 85 percent of those businesses polled reported no effect on income. The study, which reached 194 businesses in San Diego County and 189 in Orange County, involved ice cream, pizza and fast-food outlets, amusement centers and roller rinks, and retail stores specializing in hobbies, toys, games, comic books, skateboards, records and tapes, ski equipment, surfboards and camping equipment.

The results of the survey were apparently announced on the eve of arguments in the San Diego City Council to further regulate smoking in public places. On November 30, 1993, the council evidently considered a task force recommendation that restaurants and bar

completely ban smoking by 1996, and that workplaces restrict smoking to designated areas. The survey, which was conducted by researchers from the Social Science Research Center at the California State University Fullerton, was reportedly paid for by tax revenues collected under Proposition 99.

[24] "Anti-smoking Laws Enforced at Little Cost," K. Boatman, *San Jose Mercury News*, November 29, 1993

This article discusses smoking bans and restrictions that are in effect in a number of California localities. Mentioned are Santa Clara, San Jose and Fremont, cities where smoking is banned in almost every building open to the public. The author asserts that local governing bodies with such ordinances typically face few enforcement problems. She writes, "With a few notable exceptions -- two California smokers committed murder after being asked to put out cigarettes in restaurants -- there has been little stir once laws are in place."

According to the president of the Californians for Smokers' Rights, however, it is unfair to expect those who oppose smoking bans to enforce the measures once they are adopted. He was speaking of restaurant owners who have fought smoking ordinances on the ground that they will hurt business.

SCIENTIFIC/TECHNICAL ITEMS

UPCOMING SCIENTIFIC MEETINGS

[25] One-Day IAQ Course, Environmental Law and Policy Program, George Washington University, Washington, D.C., February 14 and September 7, 1994

This single-day course will reportedly present an overview and analysis of scientific, regulatory, legislative, and legal issues related to IAQ. It is apparently designed for attorneys and real estate professionals. See *Indoor Air Quality Update*, December 1993.

[26] Healthy Buildings '94, Budapest, Hungary, August 22-25, 1994

Described as "a major international conference" on IAQ issues, this conference will include scientific sessions and workshops. Topics to be discussed

reportedly include human requirements in the indoor environment, health issues related to building construction and renovation, building performance, source control, and building management and maintenance. See *Indoor Air Quality Update*, December 1993.

LUNG CANCER

- [27] "Dietary and Mental Health Differences Between Never-Smokers Living in Smoking and Non-Smoking Households," D.H. Thompson and D.M. Warburton, *Journal of Smoking-Related Disorders* 4(3): 203-211, 1993 [See Appendix A]

This paper reports on an analysis of data from the Health and Lifestyle Survey, conducted in Great Britain and published in 1987. The authors report that nonsmokers who lived with smokers were more likely to consume more saturated fats, fewer vegetables, and more alcohol than were nonsmokers who lived with smokers. In addition, those in smoking households also reported more depression and insomnia than did persons in nonsmoking households. The authors suggest that their analyses support the role of diet and lifestyle factors as confounders of the reported epidemiologic associations between ETS exposure and disease.

CARDIOVASCULAR ISSUES

- [28] "Indoor Passive Smoking and Cardiac Performance: Mechanisms Able to Cause Heart Failure," L. Mori, F. Bertanelli, P. Fabiano, A. Battaglia, and A. Leone, *Journal of Smoking-Related Disorders* 4(3): 213-217, 1993 [See Appendix A]

In this Italian study, male subjects exercised in a "smoke-free" environment, and in an environment where smoking took place. The authors report "impaired cardiac performance" in both "healthy" subjects, and in subjects who had previously had a myocardial infarction.

RESPIRATORY DISEASES AND CONDITIONS -- CHILDREN

- [29] "Effects of Passive Smoking on Respiratory Illness from Birth to Age Eighteen Months, in Shanghai, People's Republic of China," C. Jin and A.M. Rossignol, *Journal of Pediatrics* 123: 553-558, 1993 [See Appendix A]

Respiratory illness among children in one district of Shanghai was discussed in this paper. The sample consisted of families in which the mother reportedly did not smoke; ETS exposure was approximated as the number of cigarettes smoked daily by other family members. The authors claim to find a dose-response relationship between numbers of cigarettes smoked by household members and the child's risk of respiratory illness.

OTHER CANCER

- [30] "Environmental Tobacco Smoke and the Risk of Cancer in Adults," J. Tredaniel, P. Boffetta, R. Saracci, and A. Hirsch, *European Journal of Cancer* 29A(14): 2058-2068, 1993 [See Appendix A]

The authors of this study, three of whom are affiliated with the International Agency for Research on Cancer (IARC), review published epidemiologic studies on ETS exposure and cancers of the lung, urinary bladder, uterine cervix, nasal sinus, breast, brain, colon, endocrine system, and all sites combined. They claim that a relationship between ETS exposure and lung cancer is "definitely established," but that there is "no final evidence" for an association at the other sites. See also issue 62 (Item 41) of this Report, December 17, 1993.

OTHER HEALTH ISSUES

- [31] "Day Care Attendance and Other Risk Factors for Invasive *Haemophilus influenzae* Type b Disease," C. Arnold, S. Makintube, and G.R. Istre, *American Journal of Epidemiology* 138(5): 333-340, 1993 [See Appendix A]

Haemophilus influenzae type b (Hib) is a bacterium associated with several disease outcomes, including

2046362054

meningitis, particularly in young children. Based on a study of children in Oklahoma, the authors report that day care attendance was statistically significantly associated with an increased risk of meningitis due to Hib infection. Smoking in the home was investigated as a potential risk factor; no statistically significant increase in risk was reported.

- [32] "Bed Sharing, Smoking, and Alcohol in the Sudden Infant Death Syndrome," R. Scragg, E.A. Mitchell, B.J. Taylor, A.W. Stewart, R.P.K. Ford, J.M.D. Thompson, E.M. Allen, and D.M.O. Becroft, on behalf of the New Zealand Cot Death Study Group, *British Medical Journal* 307: 1312-1318, 1993 [See Appendix A]

In another paper from the New Zealand study on sudden infant death syndrome (SIDS), the authors report a statistically significant risk of SIDS for infants whose mothers smoked and who shared beds with the infant. The authors suggest that "passive smoking" is the important factor in the claimed association, and suggest that the mother exhales smoke constituents that are breathed in by the infant.

INDOOR AIR QUALITY

- [33] "Asthma and the Home Environment," D. Norback, E. Bjornsson, J. Widstrom, G. Strom, C. Edling, U. Palmgren, C. Jansson, and G. Boman. In: *Building Design, Technology, and Occupant Well-Being in Temperate Climates*. E. Sterling, C. Bieva, and C. Collett (eds.). Atlanta, ASHRAE, 329-333, 1993 [See Appendix A]

The authors of this study report that, in a Swedish population, asthma symptoms were associated with the presence of house dust mites and with elevated carbon dioxide levels. They suggest that minimizing home dampness plus adequate ventilation are needed.

- [34] "Experimental Exposures to (1-3)-Beta-D-Glucan," R. Rylander. In: *Building Design, Technology, and Occupant Well-Being in Temperate Climates*. E. Sterling, C. Bieva, and C. Collett (eds.). Atlanta, ASHRAE, 338-340, 1993 [See Appendix A]

This paper reports on preliminary exposure studies using endotoxin and glucan, two substances produced by

bacteria, which have been suggested as causes of symptoms associated with sick building syndrome. Although the sample size was small, and the reported results not statistically significant, the data suggest that the two substances may be related to the development of symptoms of irritation. The research was funded by the Center for Indoor Air Research (CIAR).

- [35] "Transformations, Lifetimes, and Sources of NO₂, HONO, and HNO₃ in Indoor Environments," C.W. Spicer, D.V. Kenny, G.F. Ward, and I.H. Billick, *Journal of the Air and Waste Management Association* 43: 1479-1485, 1993 [See Appendix A]

This paper presents data on the measurement of the nitrogen oxides and their transformation products, nitrogen acids, in indoor environments. The authors report that nitrous acid (HONO) is formed by combustion (including tobacco) and by chemical reactions between NO₂ and indoor surfaces.

STATISTICS AND RISK ASSESSMENT

- [36] "Smoke and Mirrors: The EPA's Flawed Study of Environmental Tobacco Smoke and Lung Cancer," G.L. Huber, R.E. Brockie, and V.K. Mahajan, *Cato Review of Business and Government: Regulation* 1993(3): 44-54, 1993 [See Appendix A]

The authors of this article summarize available data on ETS composition, exposure and lung cancer epidemiology, in support of their position that the EPA Risk Assessment on ETS was scientifically flawed.

IN EUROPE & AROUND THE WORLD

REGULATORY AND LEGISLATIVE MATTERS

AUSTRALIA

- [37] Canberra Government Adjourns Before Considering Antismoking Legislation

Antismoking legislation proposed by the Canberra Health Minister was reportedly offered but not discussed

2046362055

as scheduled by the Canberra government on December 16, 1993. The Canberra government, currently in recess, is scheduled to reconvene in mid-February 1994.

The proposal, "Smoke Free Areas Bill 1993," would ban smoking in restaurants while exempting bars in hotels, clubs and taverns from the restrictions. It has spurred demands by the Australian Hotels Association that restaurants and licensed premises be declared exempt because smoke free restaurants would be a "disaster" for the city's tourism and hospitality industries. Those opposed to the legislation also claim that more than 1,500 jobs will be lost and many restaurants forced out of business if the government succeeds with its proposal. See *Canberra Times*, December 17, 1993; *Canberra Times*, December 20, 1993; and *Daily Telegraph Mirror*, December 18, 1993.

[38] Ministerial Council Adopts ETS Labeling Recommendations

The Ministerial Council on Drug Strategy has adopted cigarette package labeling recommendations which would include information concerning the purported health consequences for nonsmokers who are exposed to ETS. The government has proposed passing regulations pursuant to the authority of the Trade Practices Act which would give effect to these labeling recommendations.

GERMANY

[39] Lawmaker May Introduce Public Smoking Legislation

Press reports indicate that lawmaker Roland Sauer intends to introduce a parliamentary bill this year that would require designated smoking areas in such places as restaurants, public transport and in the workplace. The bill would also reportedly provide for fines to individual violators of up to \$DM100 and up to \$DM5,000 for establishments and corporations. The German tobacco industry has apparently said such a bill is unlikely to succeed, stating, "Germans tend to see smoking in public places as a democratic freedom." See *Wall Street Journal Europe*, January 5, 1994.

SINGAPORE

[40] Singapore Steps Up Campaign to Become the World's First Smoke Free Country

According to reports, Singapore has taken further action to become the world's first smoke-free country, requiring that health warnings be displayed on both sides of cigarette packages. In addition, two new warning messages have been added: "Smoking kills" and "Smoking harms your family."

Last year, all persons under the age of 18 possessing cigarettes in public, whether or not they were smoking, were fined. Fines range from \$30 U.S. for the first offense to \$60 U.S. thereafter. Individuals caught selling tobacco to minors are subject to a \$6,300 U.S. fine. Fines were also imposed on members of the armed forces who were caught smoking in public while in uniform. Smoking on military bases is restricted to a few designated areas. Smoking is already banned in restaurants, stores, public restrooms, cinemas, museums, indoor sports arenas, public transportation and government offices. Singapore Airlines bans smoking on all regional flights. Limits have also been placed on tobacco advertising, and free samples are illegal.

Singapore reportedly stepped up its campaign due to a survey which revealed that, despite efforts by Singapore officials, the smoking rate among 18 and 19 year olds tripled from 5 percent in 1987 to 15 percent in 1991. See *The Associated Press*, January 1, 1994.

UNITED KINGDOM

[41] U.K. Launches Antismoking Campaign

On December 28, 1993, Health Minister Brian Mawhinney announced a government plan aimed at reducing the number of smokers in the United Kingdom. According to press reports, Mawhinney stated that in addition to reducing the number of lost work days and the "death toll caused by smoking," the campaign would also concentrate on the "dangers" of ETS exposure. Mawhinney claimed that one nonsmoker a day dies from lung cancer because of other people's smoking and that 50 children under age five were admitted to the hospital each day "suffering from symptoms of passive smoking."

2046362056

The campaign centers around a higher tax on tobacco. Because the government reportedly feels that campaigns aimed at children have failed in the past, they decided to focus on adults in this campaign, which is part of the Government's "Health of the Nation" strategy. They hope that adults who give up smoking or who choose not to smoke will influence their children to do the same. Research cited by the Government suggests that children of nonsmoking parents are two and a half times less likely to smoke than children whose parents smoke. See *The Times*, December 29, 1993; and *The Guardian*, December 29, 1993.

ETS LITIGATION NOT INVOLVING THE TOBACCO INDUSTRY

AUSTRALIA

[42] *Cameron v. Qantas Airways Limited* (Federal Court, New South Wales) (filed April 7, 1993)

On December 21, 1993, plaintiff filed a Further Amended Statement of Claim that, among other things, would add a "class of persons" consisting of 18 to 20 additional parties to the action. At a hearing on that date, counsel for plaintiff indicated the "class" would include any passengers and flight crew who had flown on international Qantas flights from March 5, 1992, who had allegedly suffered damage arising from ETS exposure on such flights. The court indicated the amended statement of claim needed further limitations and gave until January 31, 1994, for plaintiff to further amend her claim. A hearing on the matter is currently scheduled for February 11.

The original case involves Leonie Cameron, who claims her shopping trip to Bangkok was ruined after she was forced to sit next to a smoker on a Qantas flight. She is seeking, among other things, a declaration that Qantas engaged in unconscionable, misleading or deceptive conduct in permitting smoking in its aircraft.

LEGAL ISSUES AND DEVELOPMENTS

AUSTRALIA

[43] *Shopper Claims ETS Caused Asthma Attack, Threatens Suit*

According to a press report, a regular shopper at a large Melbourne shopping center has threatened to take legal action because ETS at the center allegedly causes her to suffer asthma attacks. Highpoint Shopping Centre in Maribyrnong reportedly received a letter to this effect from a solicitor's office on behalf of the woman and her 10-month-old daughter. The center immediately announced that it may declare the center, which already provides nonsmoking areas, smoke free at the end of 1994. The shopper, Dr. Merryn Wild, has said that she may not drop her plan to sue the center in spite of the announcement because she believes a year is too long to wait for a smoke-free environment.

The solicitor's letter reportedly premises the threat of litigation on alleged breach of the Disability Discrimination Act, the Human Rights and Equal Opportunity Act and the Equal Opportunity Act. Dr. Wild is also apparently considering a prosecution for unspecified damages for the acute asthma attacks she alleges were caused by ETS at Highpoint.

In a related development, a woman who alleges that ETS exposure on a cruise caused her to suffer chronic bronchitis and develop asthma is reportedly planning to sue P and O Holidays and a travel agent. She is also apparently being represented by a solicitor at Maurice Blackburn and Company. According to a press report, the 63-year-old woman from Victoria had asked for a nonsmoking traveling companion but was placed in a cabin with a smoker. When she complained, the captain allegedly told her there were no nonsmoking cabins available.

The solicitor for both women reportedly predicts that there will be more claims against the tourism, entertainment and hospitality industries in the next decade. He also apparently said that child custody cases will soon be litigated in Australia on the basis of ETS exposure. See *Sunday Age*, December 26, 1993; *Age*, December 27, 1993.

2046362057